



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0278/1
ARG:cjs:ph

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 216**

February 13, 2012 – Offered by Representative PETROWSKI.

1 **AN ACT to repeal** 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305
2 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (c), 84.305
3 (3) (f), 84.305 (5) (b) and 84.305 (5) (c); **to renumber and amend** 84.305 (3) (e)
4 and 84.305 (6); **to consolidate, renumber and amend** 84.305 (2) (a) (intro.)
5 and 3.; **to amend** 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b),
6 84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and **to create** 84.305
7 (1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (ag) and (ar), 84.305
8 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance and removal
9 of vegetation obstructing the view of outdoor advertising signs along highways
10 under the jurisdiction of the Department of Transportation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) is responsible for maintenance of the highway right-of-way on highways that, for maintenance purposes, are under its jurisdiction, which are generally state trunk highways

(including interstate highways) but do not include connecting highways. DOT must provide for the care and protection of trees and other roadside vegetation. DOT must also cut, trim, or remove, or allow others to cut, trim, or remove, trees and other vegetation in order to provide safety to highway users. Current law generally prohibits a person from cutting, trimming, removing, or planting a tree or other vegetation within the right-of-way of a state trunk highway without DOT's consent.

The federal Highway Beautification Act requires states to restrict advertising along interstate and federal-aid primary highways, which includes state trunk highways and connecting highways, and current state law incorporates these requirements. Current law prohibits, with certain exceptions, the erection or maintenance of outdoor advertising signs (signs) within 660 feet of, or beyond 660 feet but visible (and erected for the purpose of being visible) from, the main-traveled way of an interstate or federal-aid primary highway. Exceptions to this prohibition include, with some restrictions, signs advertising activities conducted on the property on which the signs are located; signs located beyond 660 feet of the highway in urban areas; and signs located within 660 feet of the highway in certain business, industrial, or commercial areas.

Under current law, DOT administers a permit system for the maintenance and removal by sign owners of vegetation obstructing the view of signs along state trunk highways, including interstate highways. DOT may issue permits to sign owners for the trimming, removal, or relocation of vegetation in the highway right-of-way if, within various specified distances along the highway, the vegetation obstructs motorists' view of the face of a sign. A permit authorizes the sign owner, or a third-party contractor employed by the sign owner, to trim, remove, or relocate obstructing vegetation to the extent necessary to eliminate the obstruction and restore an unobstructed view of the sign for the applicable specified distance along the highway. A permit must specify the vegetation or the portion of the highway right-of-way to which the permit applies. Each permit must require a sign owner that removes planted vegetation to either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. DOT must present to the sign owner DOT's calculation of the value of the planted vegetation, and the sign owner may elect to relocate the planted vegetation or to reimburse DOT in the amount calculated by DOT.

This substitute amendment makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The substitute amendment replaces various sign viewing standards with a single standard: that a sign owner is eligible for a permit to trim or remove vegetation if, for a distance of 500 continuous feet within the 1,000 feet distance motorists travel immediately before reaching the sign, the vegetation obstructs the view of any portion of the face of the sign. The substitute amendment also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The substitute amendment specifies that, with limited exceptions, DOT must issue permits to eligible applicants. Also under the substitute amendment, DOT permits authorize the trimming or removal, but not the relocation, of

obstructing vegetation. The substitute amendment also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute.

3. The substitute amendment eliminates the requirement that a permittee that removes planted vegetation must either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. The substitute amendment replaces this requirement with the requirement that a permittee that removes vegetation with a diameter of four inches or more must plant replacement vegetation to compensate for the vegetation removed. DOT must determine where the replacement vegetation is to be planted, but it must be planted in the highway right-of-way within ten miles of the location where the vegetation was removed. The substitute amendment specifies that a permittee that removes vegetation must also remove the vegetation's stump and must dispose of all vegetation removed.

4. Under the substitute amendment, DOT's permit system for the maintenance and removal of vegetation obstructing the view of a sign also applies to any sign that is attached to a building or similar structure and that is within 100 feet of the highway right-of-way.

5. The substitute amendment eliminates a provision of current law that a permit may not authorize the trimming, removal, or relocation of vegetation in existence prior to the erection of the sign obstructed by the vegetation. The substitute amendment replaces this provision with a provision that DOT may not issue a permit to trim or remove vegetation obstructing the view of a sign that is less than five years old (calculated from when DOT first collected the sign's permit fee), except a sign attached to a building or similar structure within 100 feet of the highway right-of-way.

6. The substitute amendment eliminates a provision of current law allowing DOT to require as a condition or restriction under a permit that the work authorized under the permit meet standards established by DOT. Instead, under the substitute amendment, DOT may impose any condition or restriction on a permit that DOT customarily imposes in connection with work performed on highway rights-of-way. The substitute amendment retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

7. Under the substitute amendment, DOT may deny an application for a permit for a sign for which DOT has issued a removal order and the removal order was received by the sign owner prior to DOT's receipt of the application. DOT may also impose conditions or restrictions on a permit under certain circumstances, including that the application seeks authorization for the trimming or removal of vegetation at an archaeological site. Under the substitute amendment, all trimming and removal of vegetation, as well as all planting of replacement vegetation, must be conducted within the hours of the day and days of the week specified by DOT in the permit.

8. The substitute amendment eliminates a requirement under current law that, under certain conditions, a sign owner applying for a permit must, at the time of the application, provide written notice of the application to any adjacent property owner and to the applicable municipality.

9. The substitute amendment eliminates a provision of current law requiring DOT, within 30 days of receiving an application for a permit, to determine whether the application is complete and to return it to the applicant if incomplete.

10. The substitute amendment expands the definition of “vegetation,” for purposes of the substitute amendment, to include grass. The substitute amendment also eliminates the distinction between various other types of vegetation, including “natural vegetation,” “planted vegetation,” and “specimen trees.”

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 84.305 (1) (c) of the statutes is repealed.

2 **SECTION 2.** 84.305 (1) (cm) of the statutes is created to read:

3 84.305 (1) (cm) “Natural snow fence” means vegetation in a highway
4 right-of-way that functions as a berm or barrier to inhibit the accumulation of snow
5 on the highway during the winter season.

6 **SECTION 3.** 84.305 (1) (d) of the statutes is repealed.

7 **SECTION 4.** 84.305 (1) (e) of the statutes is amended to read:

8 84.305 (1) (e) “Sign” has the meaning given in s. 84.30 (2) (j), but also includes
9 any sign that is attached to a building or similar structure and that is within 100 feet
10 of a highway right-of-way.

11 **SECTION 5.** 84.305 (1) (f) of the statutes is repealed.

12 **SECTION 6.** 84.305 (1) (h) of the statutes is amended to read:

13 84.305 (1) (h) “Vegetation” means any tree, shrub, hedge, ~~or other~~ woody plant,
14 ~~and includes planted vegetation, natural vegetation, and specimen trees.~~
15 ~~“Vegetation” does not include or~~ grass.

16 **SECTION 7.** 84.305 (1) (k) of the statutes is repealed.

17 **SECTION 8.** 84.305 (2) (a) (intro.) and 3. of the statutes are consolidated,
18 renumbered 84.305 (2) and amended to read:

1 84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m),
2 upon application, the department ~~may~~ shall issue permits to sign owners for the
3 trimming, or removal, ~~or relocation~~ of vegetation that is located in the right-of-way
4 of a highway under the jurisdiction of the department for maintenance purposes and
5 that obstructs a sign if ~~any of the following applies:~~ ~~3. Subject to par. (b)~~, within a
6 distance of 500 continuous feet along any portion of the viewing zone, any portion of
7 the face of the sign is not viewable because of an obstruction to sight by ~~natural~~
8 vegetation in the highway right-of-way.

9 **SECTION 9.** 84.305 (2) (a) 1. of the statutes is repealed.

10 **SECTION 10.** 84.305 (2) (a) 2. of the statutes is repealed.

11 **SECTION 11.** 84.305 (2) (a) 4. of the statutes is repealed.

12 **SECTION 12.** 84.305 (2) (b) of the statutes is repealed.

13 **SECTION 13.** 84.305 (2m) (b) and (c) of the statutes are created to read:

14 84.305 (2m) (b) The department may impose on a permit under this section any
15 condition or restriction determined to be necessary or suitable by the department if
16 the permit application seeks authorization for the trimming or removal of vegetation
17 at or with respect to any of the following:

18 1. An archaeological site or site of a federally recognized American Indian tribe
19 or band.

20 2. A location that is part of a known habitat of endangered species or threatened
21 species under s. 29.604.

22 3. Vegetation that serves as a junkyard screen, as described in s. 84.31.

23 (c) The department may deny an application under this section for a permit for
24 a sign for which the department has issued a removal order and the removal order
25 was received by the sign owner prior to the department's receipt of the application.

1 **SECTION 14.** 84.305 (3) (a) of the statutes is amended to read:

2 84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and sub. ~~subs. (2m) (b), (4), and (6),~~
3 a permit issued under this section authorizes the permittee to trim ~~obstructing~~
4 ~~vegetation~~ or remove ~~or relocate~~ ~~obstructing individual plants~~ vegetation to the
5 extent necessary to eliminate the obstruction and ~~remedy any condition specified~~
6 ~~under sub. (2) (a) 1. to 4.~~ provide an unobstructed view of a sign for 500 continuous
7 feet within the viewing zone. A permit issued under this section shall specify the
8 vegetation or the portion of the highway right-of-way to which the permit applies.

9 **SECTION 15.** 84.305 (3) (b) of the statutes is amended to read:

10 84.305 (3) (b) An application for a permit under this section shall specifically
11 describe the work proposed by the applicant. The department shall grant or deny an
12 application for a permit under this section, and notify the applicant of the
13 department's decision, within 60 days of receipt of the application. ~~Within 30 days~~
14 ~~of receipt of the application, the department shall determine whether the application~~
15 ~~is complete and, if not, the department shall return the application to the applicant~~
16 ~~and inform the applicant of what information, specifically described, must be~~
17 ~~provided by the applicant to complete the application. The department may not deny~~
18 ~~an application for a permit under this section based solely upon receipt by the~~
19 ~~department of an objection or complaint from a property owner or municipality~~
20 ~~receiving notice under par. (e), but the department may consider the objection or~~
21 ~~complaint in determining whether to grant or deny the application for a permit. If~~
22 the department denies an application for a permit under this section, the department
23 shall notify the applicant of reasons for the denial.

24 **SECTION 16.** 84.305 (3) (c) of the statutes is repealed.

25 **SECTION 17.** 84.305 (3) (d) of the statutes is amended to read:

1 84.305 (3) (d) A permit issued under this section may not authorize trimming,
2 or removal, or relocation of vegetation located within a municipality and within 10
3 feet of the nearest edge of the highway pavement without prior approval for the
4 trimming, or removal, or relocation from the municipality.

5 **SECTION 18.** 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and
6 amended to read:

7 84.305 (2m) (a) ~~A permit issued under this section may not authorize the~~
8 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~
9 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The
10 ~~department from issuing~~ may not issue a permit under this section authorizing the
11 trimming, or removal, or relocation of vegetation that, at the time the sign was
12 erected, ~~did not obstruct~~ obstructing the view of the a sign if the department first
13 collected a permit fee under s. 84.30 (10m) for that sign within the immediately
14 preceding 5 years. This paragraph does not apply with respect to a sign that is
15 attached to a building or similar structure and that is within 100 feet of a highway
16 right-of-way.

17 **SECTION 19.** 84.305 (3) (f) of the statutes is repealed.

18 **SECTION 20.** 84.305 (3) (g) of the statutes is amended to read:

19 84.305 (3) (g) A permit issued under this section may not authorize the
20 permittee to clear-cut any highway right-of-way. The permit authorizes the
21 permittee to trim, or remove, or relocate only the vegetation specified in the permit,
22 or only vegetation within the area of the right-of-way specified in the permit, in
23 accordance with the terms of the permit. All trimming of vegetation authorized
24 under a permit shall be performed in compliance with applicable standards of the
25 American National Standards Institute, but if the trimming cannot be accomplished

1 in compliance with these standards, the vegetation may be removed and replaced as
2 provided in sub. (5).

3 **SECTION 21.** 84.305 (3) (h) of the statutes is created to read:

4 84.305 (3) (h) All trimming and removal of vegetation under a permit issued
5 under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within
6 the hours of the day and days of the week specified by the department in the permit.

7 **SECTION 22.** 84.305 (5) (a) of the statutes is amended to read:

8 84.305 (5) (a) ~~Each~~ Subject to par. (ar), each permit issued under this section
9 shall require a permittee that removes ~~planted vegetation to either relocate the~~
10 ~~planted vegetation or reimburse the department for the value of the planted~~
11 ~~vegetation. The department shall present to the permittee the department's~~
12 ~~calculation of the value of the planted vegetation, and the permittee may elect to~~
13 ~~relocate the planted vegetation or to reimburse the department for the value of the~~
14 ~~planted vegetation as determined by the department~~ any tree with a diameter of 4
15 inches or more as measured at 3 feet from the ground, or any other vegetation with
16 a diameter of 4 inches or more, to plant comparable replacement vegetation to
17 compensate for all such vegetation removed, in compliance with the requirements
18 under pars. (d) and (e).

19 **SECTION 23.** 84.305 (5) (ag) and (ar) of the statutes are created to read:

20 84.305 (5) (ag) Each permit issued under this section shall require a permittee
21 that removes vegetation to also remove the vegetation's stump, to grade level, and
22 to dispose of all vegetation removed, including the stump, at a location away from the
23 highway right-of-way.

24 (ar) The department may require that, if vegetation that serves as a natural
25 snow fence cannot be trimmed in compliance with the standards specified in sub. (3)

1 (g) and is removed, this vegetation shall be replaced with an equally effective,
2 substitute means of controlling blowing and drifting snow, which means may be
3 synthetic or artificial.

4 **SECTION 24.** 84.305 (5) (b) of the statutes is repealed.

5 **SECTION 25.** 84.305 (5) (c) of the statutes is repealed.

6 **SECTION 26.** 84.305 (5) (d) of the statutes is created to read:

7 84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the
8 permittee shall determine the diameters of all trees with a diameter of 4 inches or
9 more, as measured at 3 feet from the ground, and of all other vegetation with a
10 diameter of 4 inches or more, that was removed and shall calculate the sum total of
11 these diameters for each category of vegetation, such as for trees, for shrubs, and for
12 hedges. In calculating the sum total of these diameters, the permittee shall not
13 include in the calculation the diameter of any vegetation that was dead, diseased, or
14 determined to be an invasive species at the time of its removal.

15 2. The permittee shall plant sufficient replacement vegetation with a diameter
16 of at least 2 inches so that the sum total of the diameters of the replacement
17 vegetation, for each category of vegetation, at least equals the sum total of the
18 diameters as calculated under subd. 1. for that category.

19 **SECTION 27.** 84.305 (5) (e) of the statutes is created to read:

20 84.305 (5) (e) 1. Subject to subd. 2., the department shall determine where
21 replacement vegetation required under this subsection is to be planted.

22 2. Replacement vegetation required under this subsection shall be planted in
23 the highway right-of-way not farther than 10 miles from the location of the removed
24 vegetation being replaced. Replacement vegetation may not be planted in front of
25 a sign.

